

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

TONI SUE HOLMES,

Plaintiff,

v.

CAROLYN W. COLVIN, Acting
Commissioner of the Social Security
Administration,

Defendant.

CASE NO. 3:16-cv-05367 JRC

ORDER ON PLAINTIFF'S
COMPLAINT

This Court has jurisdiction pursuant to 28 U.S.C. § 636(c), Fed. R. Civ. P. 73 and Local Magistrate Judge Rule MJR 13 (*see also* Notice of Initial Assignment to a U.S. Magistrate Judge and Consent Form, Dkt. 3; Consent to Proceed Before a United States Magistrate Judge, Dkt. 5). This matter has been fully briefed (*see* Dkt. 9, 10, 11).

After considering and reviewing the record, the Court concludes that the ALJ erred when evaluating the medical evidence provided by plaintiff's treating physician regarding her physical limitations. The ALJ's finding that plaintiff demonstrated normal

1 muscle strength and range of motion does not necessarily demonstrate any inconsistency
2 with the opinion from a treating physician that plaintiff had lifting limitations and must
3 alternate between sitting and standing in order to relieve pain or discomfort. This is
4 especially the case here, as plaintiff's case has been "complicated by significant hernias
5 and repairs" (AR. 465). The ALJ also failed to explain why she did not adopt a
6 limitation from plaintiff's treating physician that plaintiff had limitations in her ability to
7 report to work on a consistent basis (AR. 542).

8
9 Therefore, this matter is reversed and remanded pursuant to sentence four of 42
10 U.S.C. § 405(g) to the Acting Commissioner for further consideration consistent with this
11 order.

12 BACKGROUND

13 Plaintiff, TONI SUE HOLMES, was born in 1969 and was 40 years old on the
14 alleged date of disability onset of October 1, 2009 (*see* AR. 145-51). Plaintiff has a GED
15 and was a certified real estate agent (AR. 573-74). Plaintiff has work history as a
16 receptionist and real estate agent (AR. 763). Plaintiff stopped working in real estate
17 when, because of the pain and pain meds, she felt she just could not do it anymore (AR.
18 574).

19 According to the ALJ, through the date last insured, plaintiff has at least the severe
20 impairments of "major depressive disorder; panic disorder; abdominal pain syndrome;
21 and obesity (20 CFR 404.1520(c))" (AR. 548).

22
23 At the time of the hearing, plaintiff was living in a home with her husband and
24 five and a half year old grandson (AR. 573, 607-08).

DISCUSSION

Did the ALJ err in rejecting the medical opinions of Joseph Regimbal, MD; Barbara Dahl, PhD, and Jesse McClelland, MD?

First, defendant contends that the Court should not consider some of plaintiff's assignments of error due to the "law of the case" doctrine. As noted by defendant, "a court is generally precluded from considering an issue that was decided explicitly or by necessary implication in the previous disposition" (Dkt. 10, p. 2 (citing *United States v. Lummi Indian Tribe*, 235 F.3d 443, 452 (9th Cir. 2000))). This doctrine supports the efficient operation of the courts. *See id.* (citation omitted). However, there are two problems with defendant's argument. The Court did not "implicitly f[ind] no error in the ALJ's evaluation of Dr. Regimbal's and Dr. Dahl's opinions," as suggested by defendant, as whether or not there was such error was irrelevant to the Court's decision; and, the particular rationale by the ALJ for her failure to credit fully those opinions in the written decision currently before this Court could not have been affirmed by this Court previously, as they were not part of the previous written decision (Dkt. 10, p. 3).

Defendant argues specifically that the ALJ's evaluation of the medical opinions of Drs. Regimbal and Dahl should not be considered by this Court. However, plaintiff replies that the ALJ's original findings regarding these opinions were vacated, as the Appeals Council vacated the prior ALJ decision following remand of the matter (*see* Dkt. 11, p. 2 (citing AR. 664)). Plaintiff is correct in this argument.

The Court also notes that the legitimacy of the ALJ's rejection of the medical opinions of Drs. Regimbal and Dahl was not decided by the Court previously, either

1 explicitly or by implication (*see* AR. 649-62 (14-cv-5936-KLS)). Instead, the Court
2 concluded that “the ALJ erred in evaluating the medical evidence, and thus in assessing
3 plaintiff’s residual functional capacity (‘RFC’), and therefore in determining plaintiff to
4 be not disabled” (AR. 650). In so concluding, the Court evaluated only the ALJ’s failure
5 to credit fully the medical opinion of Dr. McClelland (AR. 652-57). The ALJ’s failure to
6 credit fully the medical opinions of Drs. Regimbal and Dahl was not discussed at all by
7 the Court, and was not decided by necessary implication because whether or not these
8 two opinions were rejected properly or improperly had no bearing on whether or not the
9 rejection of Dr. McClelland’s opinion was proper.
10

11 In addition, perhaps most persuasively, plaintiff also notes that after “the ALJ
12 started over in the case and re-evaluated the evidence of the record anew, including re-
13 evaluating the opinions of Drs. Regimbal and Dahl, [] the ALJ gave different rationales in
14 each case for rejecting their medical opinions (*see* Dkt. 11, p. 2 (citing as a comparison,
15 “the ALJ’s rationale in 2013 vs. 2016[:] AR. 28/AR. 556-57 for Dr. Regimbal and AR.
16 28 vs. AR. 559-60 for Dr. Dahl”)). Plaintiff argues that because “the ALJ offered
17 different rationales for rejecting Drs. Regimbal and Dahl’s medical opinion on remand,
18 plaintiff is free on this appeal to challenge the ALJ’s rationales absent constraint by the
19 law of the case doctrine” (*id.*). Plaintiff obviously did not have any opportunity to object
20 to the rationale offered by the ALJ in her 2016 written opinion when before this Court
21 previously.
22

23 The Court concludes that plaintiff’s argument is persuasive. Even if the ALJ’s
24 original rationale for failing to credit fully these particular medical opinions in her 2013

1 decision was not challenged and was appropriate, the 2013 written decision was vacated
2 by the Appeals Council, and the ALJ offered different rationales for failing to credit fully
3 these particular medical opinions in her 2016 written decision (*see* AR. 664). The 2013
4 written decision is not before this Court. Plaintiff has brought a challenge of the ALJ's
5 2016 written decision to this Court and the Court will consider plaintiff's arguments (*see*
6 AR. 546-61).

7
8 Plaintiff contends that the ALJ erred when evaluating the medical opinions
9 provided by two of her treating doctors and by one of her examining physicians, all of
10 which were contradicted by state agency doctors' medical opinions. Defendant contends
11 that there is no harmful legal error.

12 When an opinion from an examining or treating doctor is contradicted by other
13 medical opinions, the treating or examining doctor's opinion can be rejected only "for
14 specific and legitimate reasons that are supported by substantial evidence in the record."
15 *Lester v. Chater*, 81 F.3d 821, 830-31 (9th Cir. 1996) (*citing Andrews v. Shalala*, 53 F.3d
16 1035, 1043 (9th Cir. 1995); *Murray v. Heckler*, 722 F.2d 499, 502 (9th Cir. 1983)); *see*
17 *also* 20 C.F.R. §§ 404.1527(a)(2) ("Medical opinions are statements from physicians and
18 psychologists or other acceptable medical sources that reflect judgments about the nature
19 and severity of your impairment(s), including your symptoms, diagnosis and prognosis,
20 what you can still do despite impairment(s), and your physical or mental restrictions"). In
21 addition, a "treating physician's medical opinion as to the nature and severity of an
22 individual's impairment must be given controlling weight if that opinion is well-
23 supported and not inconsistent with the other substantial evidence in the case record."
24

1 *Edlund v. Massanari*, 2001 Cal. Daily Op. Srv. 6849, 2001 U.S. App. LEXIS 17960 at
2 *14 (9th Cir. 2001) (*citing* SSR 96-2p, 1996 SSR LEXIS 9).

3 **A. Dr. Joseph Regimbal, MD, treating physician**

4 Dr. Regimbal was one of plaintiff's treating physicians and offered specific
5 opinions regarding plaintiff's functional limitations on January 18, 2012 (AR. 535-42).
6 As noted by the ALJ, Dr. Regimbal "opined that the claimant could lift 10 pounds
7 occasionally and less than 10 pounds frequently, stand and/or walk less than two hours in
8 an eight hour workday [and] also opined that the claimant must alternate sitting and
9 standing to relieve pain or discomfort" (AR. 556). The ALJ gave little weight to
10 Dr. Regimbal's opinion (AR. 557).
11

12 In support of the ALJ's failure to credit fully Dr. Regimbal's opinion, the ALJ
13 relied on the finding that the "overall exam findings that show full motor strength and
14 normal range of motion are inconsistent with his opinion," further noting that while "the
15 claimant needs restrictions on lifting due to her prior abdominal surgery and hernia
16 repair, the claimant's activities show that she is capable of at least a light residual
17 functional capacity" (*id.*). The ALJ provided an example, noting that Dr. Regimbal noted
18 that plaintiff was caring for her grandchild and involved in numerous projects" (*id.* (citing
19 AR. 338-40)).
20

21 The ALJ does not reference any evidence that plaintiff's care for her grandchild
22 did not, for example, allow for plaintiff to alternate between sitting and standing, or
23 required more than two hours of standing and walking in an eight-hour day. Similarly, the
24 fact that plaintiff demonstrated normal motor strength in her extremities does not

1 demonstrate that she can lift more than 10 pounds occasionally, did not need to alternate
2 between sitting and standing, and could stand or walk more than two hours in a eight-
3 hour workday. In addition, having normal motor strength in one's arms and legs does not
4 necessarily indicate the ability to lift, especially here, where the ALJ acknowledges that
5 plaintiff "needs restrictions on lifting due to her prior abdominal surgery and hernia
6 repair" (AR. 557). *See also, e.g., Sanchez v. Colvin*, 2014 U.S. Dist. LEXIS 52604 at *5
7 n.1, *5-*6 (C.D. Cal 2014) (finding that a medical opinion of "strict limitations [on
8 sitting, standing, walking, and lifting] appear[ed] reasonable in light of medical findings
9 that '[a]fter repair of recurrent incisional hernias, recurrence rates of up to 48 percent
10 have been reported'" (citations omitted). Plaintiff's case has been "complicated by
11 significant hernias and repairs" (AR. 465). Finally, the ALJ does not explain what
12 bearing normal range of motion has on Dr. Regimbal's opinion, or how range of motion
13 findings are inconsistent with Dr. Regimbal's opinions regarding plaintiff's limitations.

14
15 The ALJ also relied on her assumption that taking care of "a toddler also would
16 necessitate more than two hours of standing and walking in an eight hour day" (AR. 557).
17 However, the ALJ does not provide any evidence for this assumption. An ALJ may
18 "draw inferences logically flowing from the evidence." *Sample v. Schweiker*, 694 F.2d
19 639, 642 (9th Cir. 1982) (citing *Beane v. Richardson*, 457 F.2d 758 (9th Cir. 1972); *Wade*
20 *v. Harris*, 509 F. Supp. 19, 20 (N.D. Cal. 1980)). However, an ALJ may not speculate.
21 *See* SSR 86-8, 1986 SSR LEXIS 15 at *22. Here, the ALJ's assumption that taking care
22 of "a toddler also would necessitate more than two hours of standing and walking in an
23 eight hour day" is speculation and not based on substantial evidence in the record (AR.
24

1 557). It also is not a legitimate reason for failing to credit fully the medical opinion of a
2 treating physician. Furthermore, taking care of a toddler is not necessarily inconsistent
3 with Dr. Regimbal's opinion that plaintiff must periodically alternate sitting and standing
4 in order to relieve pain or discomfort (*see* AR. 536).

5 The Court also notes that plaintiff's full motor strength and normal range of
6 motion and her caring for her grandchild and being involved in numerous projects are not
7 inconsistent with, and appear to have no relation to, Dr. Regimbal's opinion that plaintiff
8 would be severely limited in "her ability to consistently be available for employment
9 activities" due to her combined symptom complex, frequent medical visits for flu and
10 intermittent infusion therapy and her opioid/anxiolytic prescriptions for pain/anxiety (*see*
11 AR. 542 (emphasis in original)). Dr. Regimbal's opinion that plaintiff would have severe
12 difficulty with consistent attendance at a full-time job is significant and probative
13 evidence that the ALJ erred by not providing any reason for failing to credit fully. *See*
14 *Flores v. Shalala*, 49 F.3d 562, 570-71 (9th Cir. 1995) (the ALJ "may not reject
15 'significant probative evidence' without explanation") (*quoting Vincent v. Heckler*, 739
16 F.2d 1393, 1395 (9th Cir. 1984) (*quoting Cotter v. Harris*, 642 F.2d 700, 706-07 (3d Cir.
17 1981))). In fact, it appears that the ALJ was unaware of this opinion by plaintiff's treating
18 physician, which was followed by the treating physician's opinion that plaintiff is
19 "disabled by this symptom complex" (*id.*). Although defendant provides her own
20 rationale as to why some of Dr. Regimbal's opinion could have been rejected, according
21 to the Ninth Circuit, "[l]ong-standing principles of administrative law require us to
22 review the ALJ's decision based on the reasoning and actual findings offered by the ALJ
23
24

1 - - not *post hoc* rationalizations that attempt to intuit what the adjudicator may have been
2 thinking.” *Bray v. Comm’r of SSA*, 554 F.3d 1219, 1225-26 (9th Cir. 2009) (citing *SEC v.*
3 *Chenery Corp.*, 332 U.S. 194, 196 (1947) (other citation omitted)); *see also Molina v.*
4 *Astrue*, 674 F.3d 1104, 1121 (9th Cir. 2012) (“we may not uphold an agency’s decision
5 on a ground not actually relied on by the agency”) (citing *Chenery Corp*, *supra*, 332 U.S.
6 at 196).

7
8 For the reasons stated and based on the record as a whole, the Court concludes that
9 the ALJ failed to offer specific and legitimate reasons based on substantial evidence in
10 the record as a whole for her failure to credit fully the opinions of Dr. Regimbal. The
11 Court also concludes that the error is not harmless.

12 The Ninth Circuit has “recognized that harmless error principles apply in the
13 Social Security Act context.” *Molina v. Astrue*, 674 F.3d 1104, 1115 (9th Cir. 2012)
14 (citing *Stout v. Commissioner, Social Security Administration*, 454 F.3d 1050, 1054 (9th
15 Cir. 2006) (collecting cases)). Recently the Ninth Circuit reaffirmed the explanation in
16 *Stout* that “ALJ errors in social security are harmless if they are ‘inconsequential to the
17 ultimate nondisability determination’ and that ‘a reviewing court cannot consider [an]
18 error harmless unless it can confidently conclude that no reasonable ALJ, when fully
19 crediting the testimony, could have reached a different disability determination.’” *Marsh*
20 *v. Colvin*, 792 F.3d 1170, 1173 (9th Cir. July 10, 2015) (citing *Stout*, 454 F.3d at 1055-
21 56). In *Marsh*, even though “the district court gave persuasive reasons to determine
22 harmlessness,” the Ninth Circuit reversed and remanded for further administrative
23 proceedings, noting that “the decision on disability rests with the ALJ and the
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1 Commissioner of the Social Security Administration in the first instance, not with a
2 district court.” *Id.* (citing 20 C.F.R. § 404.1527(d)(1)-(3)).

3 Dr. Regimbal provided numerous opinions regarding plaintiff’s limitations, such
4 as that plaintiff could only occasionally lift 10 pounds, frequently lift less than 10 pounds,
5 and needed to be able to alternate periodically between sitting and standing in order to
6 relieve pain or discomfort (*see* AR. 536) . He also opined that plaintiff’s combined
7 symptom complex in addition to her frequent medical visits for flu and intermittent
8 infusion therapy and her opioid/anxiolytic prescriptions for pain/anxiety “severely limit
9 her ability to consistently be available for employment activities” (AR. 542). The ALJ
10 does not appear to have offered any reason for failing to credit fully Dr. Regimbal’s
11 opinion regarding this latter limitation. The Court cannot conclude with confidence that
12 “no reasonable ALJ, when fully crediting the [opinions of Dr. Regimbal], could have
13 reached a different disability determination,” therefore, the error in the ALJ’s evaluation
14 of his medical opinions is not harmless. *Marsh*, 792 F.3d at 1173 (citing *Stout*, 454 F.3d
15 at 1055-56).
16

17 Although the Court concludes that the this matter must be reversed and remanded
18 for further proceedings consistent with this Order, because this case already has been
19 remanded once before, the Court will provide some further guidance on the remainder of
20 the issues raised by plaintiff.
21

22 **B. Dr. Barbara Dahl, PhD, treating doctor**

23 Although Dr. Dahl may have been a treating psychologist, the ALJ noted that “Dr.
24 Dahl saw the claimant for a very limited period of time and only for seven sessions” (AR.

1 559). Although noting this does not entail a specific and legitimate reason for failing to
2 credit fully the medical opinion, it was not improper for the ALJ to note this finding,
3 which is based on substantial evidence in the record as a whole.

4 When failing to credit fully the medical opinion of Dr. Dahl, the ALJ relied in part
5 on a finding that there was “no evidence that Dr. Dahl performed a mental status exam
6 [MSE] or any cognitive testing on which to base her opinion” (AR. 559). This finding by
7 the ALJ is supported by substantial evidence in the record as a whole. Plaintiff argues
8 that this rationale is not legitimate because the ALJ relied on state agency medical
9 consultants who did not perform an MSE (Dkt. 9, p. 5). Defendant responds that although
10 it is true that the state agency doctors did not conduct MSEs, “they were at least able to
11 review the record evidence, including testing administered by other doctors and evidence
12 showing that plaintiff lacked credibility” (Dkt. 10, p. 9 (citing AR. 69-80, 82-96)).
13 Although plaintiff additionally argues that there is no case law dictating that a MSE must
14 be performed before a medical opinion regarding mental limitations can be considered by
15 ALJ, this does not mean that the failure to conduct an MSE is not a specific and
16 legitimate reason for failing to credit fully an opinion from a psychologist in the context
17 of a particular case.
18

19 Based on this particular record as a whole, with special regard to the actual
20 treatment record provided by Dr. Dahl and the functional capacity assessment by Dr.
21 Dahl, the Court concludes that this reason by the ALJ for failing to credit fully the
22 opinion of Dr. Dahl is a specific and legitimate reason based on substantial evidence in
23 the record as a whole for failing to credit fully Dr. Dahl’s opinion in this matter.
24

1 The ALJ also noted that the majority of the time that plaintiff was seeing Dr. Dahl,
2 plaintiff “discussed her family stress including setting boundaries with her daughter
3 around babysitting,” and also noted that it appeared “that the claimant primarily saw Dr.
4 Dahl to support her disability claim” (AR. 559 (citing AR. 525-28)). The ALJ noted that
5 after plaintiff saw Dr. Dahl seven times, “she called her attorney’s office wanting to
6 know if there was something Dr. Dahl could do to help [with her disability application,
7 and that] after Dr. Dahl wrote a statement for the claimant, the claimant did not return”
8 (*id.*). The Court has reviewed all of the treatment records between plaintiff and Dr. Dahl
9 in the record and concludes that these findings by the ALJ are supported by substantial
10 evidence in the record as a whole. There are no notations in the treatment record with Dr.
11 Dahl of any objective findings of attention or concentration difficulties, yet Dr. Dahl
12 indicated in her functional capacity assessment that plaintiff’s “pain level, depression and
13 anxiety all negatively impact [plaintiff’s] capacity for sustained attention” (AR. 527).
14 Similarly, although nothing in plaintiff’s treatment record with Dr. Dahl indicates that
15 plaintiff was demonstrating labile emotions, Dr. Dahl opined that plaintiff’s “mental
16 health issues have resulted in labile emotions when in pain, when depressed and when
17 anxious” (*id.*). Similarly, although nothing in plaintiff’s treatment record with Dr. Dahl
18 indicates that plaintiff demonstrated any difficulties regarding understanding or memory,
19 Dr. Dahl opined that plaintiff suffered from a marked inability to understand and
20 remember detailed instructions (*see* AR. 525). Furthermore, nothing in plaintiff’s
21 treatment record with Dr. Dahl supports Dr. Dahl’s opinion that plaintiff suffers from
22 marked inability to set realistic goals or make plans independently of others (*see* AR.
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24

1 526). Based on the stated reasons and the record as a whole, with particular attention
2 being paid to the treatment record with Dr. Dahl, the Court concludes that the ALJ's
3 finding that Dr. Dahl's "treatment notes are very brief and are inconsistent with marked
4 limitations" is a finding based on substantial evidence in the record as a whole (*see* AR.
5 559). The Court also concludes that this finding supports the ALJ's failure to credit fully
6 Dr. Dahl's medical opinion.

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8 For the reasons stated and based on the record as a whole, the Court concludes that
9 the ALJ offered specific and legitimate reasons based on substantial evidence in the
10 record as a whole for her failure to credit fully the medical opinion of Dr. Dahl.

11 **C. Dr. Jesse McClelland, MD, examining physician**

12 Dr. McClelland examined plaintiff on August 16, 2011 (AR. 436-41). As noted by
13 the ALJ, Dr. McClelland opined that plaintiff should be able to perform simple and
14 repetitive tasks, which the ALJ accommodated in plaintiff's RFC (AR. 440, 551, 557).
15 However, Dr. McClelland also opined that plaintiff may struggle to accept instructions
16 from supervisors because of her post traumatic stress disorder and depression (AR. 557).
17 He also opined that plaintiff likely would not be able to deal with the usual stress
18 encountered in the workplace, also may struggle to maintain regular attendance, and
19 would have interruptions in a normal workday or workweek due to her symptoms (AR.
20 440-41, 557-58).

21
22 The ALJ provided a thorough discussion regarding the medical opinion of Dr.
23 McClelland, and offered a number of reasons for failing to credit fully medical opinion of
24 Dr. McClelland (*see* AR. 557-59). For example, the ALJ noted that contrary to plaintiff's

1 presentation at Dr. McClelland's August 16, 2011 exam, approximately a year later, on
2 October 17, 2012, plaintiff's "treating provider described her as delightful" (AR. 558
3 (citing AR. 465)). Plaintiff argues that the ALJ's reliance on this contrast is not legitimate
4 because in "the same chart note where Dr. Regimbal described [plaintiff's] as 'delightful'
5 he also opined that [plaintiff] was 'increasingly anxious' and accordingly added
6 Mirtazapine into her medication regime" (Dkt. 9, p. 7 (citing AR. 310)). However,
7 plaintiff cites a different treatment record than that cited by the ALJ. When drawing her
8 contrast, the ALJ contrasted plaintiff's August 16, 2011 presentation with Dr. McClelland
9 as anxious and tearful, with her presentation on October 17, 2012 with her treating
10 physician as "delightful," citing AR. 465 (*see* AR. 558). Indeed, consistent with the
11 ALJ's finding, on October 17, 2012, plaintiff's treating physician described plaintiff as
12 "delightful" (AR. 465). On that occasion, plaintiff's treating physician, Dr. Regimbal,
13 also noted plaintiff's report that she was "overall functioning reasonably well at this point
14" (*id.*). It appears that Dr. Regimbal's only diagnosis for plaintiff regarding mental
15 impairments at this time was for depression, which he noted was "well-controlled at the
16 present time on the meds as listed above, no new symptoms, functional status is good"
17 (AR. 467). Therefore, the Court concludes that plaintiff's argument is not persuasive, and
18 concludes that the ALJ's implication that plaintiff's presentation with Dr. McClelland
19 was inconsistent with her subsequent presentation to her treating physician approximately
20 one year later is a finding based on substantial evidence in the record as a whole. The
21 Court also concludes that this finding of an inconsistency between Dr. McClelland's
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1 examination and plaintiff's presentation with her treating provider approximately 1 year
2 later supports the ALJ's failure to credit fully the medical opinion of Dr. McClelland.

3 The ALJ also found that Dr. McClelland's August 16, 2011 prognosis was "not
4 consistent with the record and detracts from his opinion in general" (AR. 559). In
5 support, the ALJ noted that Dr. McClelland opined that plaintiff's "symptoms are chronic
6 and resistant to treatment," while in contrast "only two months after his exam, her
7 treating providers indicate that the claimant was overall doing well and her depression
8 had much improved" (*id.* (citing AR. 448); *see also* AR. 440). On October 6, 2011,
9 plaintiff reported to her treating physician, Dr. Regimbal, that she had no depression,
10 confusion, or memory loss (AR. 447). He opined that her cognition was "stable without
11 change" (*id.*). He noted that plaintiff's depression was "much improved," but also noted
12 that she was increasingly anxious (AR. 448).

14 In contrast to the opinion of Dr. McClelland on August 16, 2011 that plaintiff's
15 symptoms were chronic and resistant to treatment, on October 6, 2011, approximately 2
16 months later, plaintiff's treating physician opined that her depression was much improved
17 (*see* AR. 448). Although the treating physician also indicated that the anxiety was
18 increasing, for which he added a new prescription, this treatment record provides
19 substantial evidence in the record as a whole to support the ALJ's finding that Dr.
20 McClelland's opinion that plaintiff's symptoms were chronic and resistant to treatment is
21 not consistent with the record demonstrating "much improvement" two months later. This
22 finding by the ALJ also provides for the support for her failure to credit fully the medical
23 opinion of Dr. McClelland.
24

1 It may be true that not every reason offered by the ALJ for her failure to credit
2 fully the opinions of Dr. McClelland is legitimate, however the Court concludes that any
3 error is harmless. *See Molina*, 674 F.3d at 1115 (citations omitted) (“several of our cases
4 have held that an ALJ’s error was harmless where the ALJ provided one or more invalid
5 reasons for disbelieving a claimant’s testimony, but also provided valid reasons that were
6 supported by the record”). For example, the ALJ appears to rely on plaintiff’s dog
7 breeding, however, plaintiff testified on December 20, 2012, that her son “takes care of
8 the dogs mostly [and] he’s taken over the dogs” (AR. 44).

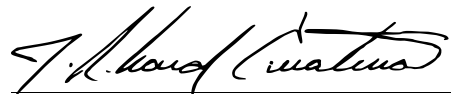
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10 For the reasons stated and based on the record as a whole, Court concludes that the
11 ALJ provided specific and legitimate reasons based on substantial evidence in the record
12 as a whole for failing to credit fully the medical opinion of Dr. McClelland.

13 CONCLUSION

14 Based on the stated reasons and the relevant record, the Court **ORDERS** that this
15 matter be **REVERSED** and **REMANDED** pursuant to sentence four of 42 U.S.C. §
16 405(g) to the Acting Commissioner for further consideration consistent with this order.

17 **JUDGMENT** should be for plaintiff and the case should be closed.

18 Dated this 28th day of November, 2016.

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20 

21 J. Richard Creatura
22 United States Magistrate Judge
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24